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Subject: Guaranteed Renewability of Conversion Policies

Markets: Individual

I. Purpose

The purpose of this Bulletin is to clarify the Health Care Financing Administration's (HCFA's) position that, under title XXVII of the Public Health Service Act (PHS Act),¹ a conversion policy issued to an individual who loses group coverage is guaranteed renewable at the option of the individual, subject to certain exceptions. This Bulletin also restates HCFA's position that a health insurance issuer² that otherwise offers only group health insurance coverage, but offers a conversion policy to an individual losing group coverage, is not deemed to be offering health insurance coverage³ in the individual market⁴ for purposes of being subject to the guaranteed availability requirements of the PHS Act.

II. Background and Discussion

A. Types of Coverage

There are three ways that an individual who loses coverage under a group health plan may be legally entitled to maintain health coverage.

¹ Title XXVII of the PHS Act was added by Title I of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

² Section 2791(b)(2) of the Public Health Service Act defines "health insurance issuer" as an insurance company, insurance service, or insurance organization (including an HMO) which is licensed to engage in the business of insurance in a State and which is subject to State law which regulates insurance (within the meaning of section 514(b)(2) of ERISA. Such term does not include a group health plan.

³ Section 2791(b)(1) of the PHS Act defines "health insurance coverage" as benefits consisting of medical care (provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as medical care) under any hospital or medical service policy or certificate, hospital or medical service plan contract, or health maintenance organization contract offered by a health insurance issuer.

⁴ Section 2791(e)(1)(A) of the PHS Act generally defines the "individual market" as the market for health insurance coverage offered to individuals other than in connection with a group health plan.

- **Continuation Coverage.** Federal or State law may require that the individual be allowed to keep the same coverage, for a specified period of time, generally at a higher premium. This is called “continuation coverage,” and is still considered to be group health insurance coverage because it involves a contractual arrangement between the issuer and the group health plan sponsor.⁵
- **Conversion Coverage.** When group health insurance coverage (including continuation coverage) terminates, the plan sponsor may arrange with the group health insurance issuer to provide “conversion” coverage. While only those people who were formerly covered under the group are eligible for the coverage, the insurance itself is individual market coverage, and generally will not have the same benefits as the terminated group coverage. A majority of States have laws that require health insurance issuers to offer conversion rights to individuals whose group coverage is terminated. The terms and conditions under which an individual is entitled to have a conversion policy issued upon termination of group health insurance coverage is governed by contract provisions, and by applicable State law.
- **Guaranteed Available Coverage.** The third option available to certain people who lose group coverage, and who otherwise meet the definition of an “eligible individual” under the PHS Act,⁶ is the right to purchase individual market coverage or comparable coverage as provided under section 2741 of the PHS Act (or section 2744, of the Act in the case of a State that has elected to implement an alternative mechanism).

As noted above, when an issuer provides group health insurance coverage, including continuation coverage, the issuer’s contractual relationship is with the group health plan sponsor. Once an individual exercises a conversion right and a conversion policy is issued, the nexus with the group health plan is severed and a new contractual relationship is formed between the health insurance issuer providing the conversion policy and the individual. While enrollment in a group health plan may give rise to a conversion right, there is no connection between the conversion policy and the group health plan once the conversion policy is issued.

As noted in the preamble to the Interim Final Rule published April 8, 1997 implementing the individual market reform provisions of title XXVII of the PHS Act: “A conversion policy is an individual policy, not a group policy, even though prior group coverage is a prerequisite to qualifying for the conversion policy.” 62 Fed. Reg. 16,985, 16,987.

⁵ Under Federal law, the right to continuation coverage is available pursuant to the Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended.

⁶ This is also referred to as a “HIPAA eligible individual.”

B. Applicability of the PHS Act Requirements to Conversion Policies

Section 2742 of the PHS Act applies the guaranteed renewability requirements to a health insurance issuer that provides individual health insurance coverage, including an issuer that provides a conversion policy. In contrast, under section 2741 of the PHS Act, an issuer that offers a conversion policy is specifically exempted from the guaranteed availability requirements that otherwise apply to an issuer that offers health insurance coverage in the individual market.⁷

• **Guaranteed Renewability**

The general rule regarding guaranteed renewability under section 2742 of the PHS Act is that a health insurance issuer that provides individual health insurance coverage must renew or continue the coverage in force at the option of the individual, unless certain exceptions apply. This section is implemented by regulation at 45 CFR 148.122, which specifies that the requirement applies to “all health insurance coverage in the individual market.” As discussed above, a conversion policy meets the definition of individual health insurance coverage. Therefore, an issuer that furnishes or provides a conversion policy is subject to the guaranteed renewability provisions of section 2742 of the PHS Act and 45 CFR 148.122 because the general rule applies to all individual health insurance coverage. Moreover, an issuer that offers a conversion policy is subject to all of the individual market requirements contained in title XXVII of the PHS Act, unless a specific exception applies.

It is important to note that an individual is not required to accept a conversion policy. As a general rule, an individual who elects conversion coverage forfeits the ability to qualify as an eligible individual⁸ for purposes of obtaining coverage in the individual market, because an individual electing conversion coverage will not satisfy the criterion that the individual’s most recent coverage must have been group health plan coverage, including coverage under a governmental plan or church plan.⁹ Since the PHS Act does not provide protections for portability from one individual policy to another individual policy, the guaranteed renewability of a conversion policy may be the only means by which an individual who accepts such a policy can maintain health insurance coverage.

⁷ While the guaranteed renewability provisions contained in section 2742 of the PHS Act apply in every State, the guaranteed availability requirements contained in section 2741 of the PHS Act only apply in States that have not implemented an alternative mechanism for assuring availability of coverage to eligible individuals, pursuant to section 2744 of the PHS Act.

⁸ An eligible individual is defined in section 2741(b) of the PHS Act as an individual who, among other criteria, has 18 or more months of creditable coverage as of the date on which the individual seeks coverage and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan (or health insurance coverage offered in connection with any such plan).

⁹ Florida, Georgia and Ohio use conversion policies as all or part of the State alternative mechanism (SAM) for assuring availability of coverage to eligible individuals. The general rule that an individual who elects conversion coverage forfeits the ability to qualify as an eligible individual is not relevant in these States because purchasing a conversion policy may be the State approved method for eligible individuals to exercise their rights to obtain coverage in the individual market.

- **Guaranteed Availability**

Pursuant to section 2741 of the PHS Act, which only applies in States that are not implementing an alternative mechanism, a health insurance issuer that offers health insurance coverage in the individual market in a State may not decline to offer such coverage to an eligible individual unless certain exceptions are met. Any question as to whether an issuer that offers a conversion policy to an individual is subject to the guaranteed availability requirements of section 2741 of the PHS Act is settled by the exception set forth in section 2741(e){f}(2)¹⁰ which states that --

A health insurance issuer offering health insurance coverage in connection with group health plans under this title shall not be deemed to be a health insurance issuer offering individual health insurance coverage solely because such issuer offers a conversion policy.

If an issuer does not otherwise market any individual policies, offering a conversion policy to former members of a group health plan does not make the issuer subject to the guaranteed availability requirements of section 2741(a)(1), as implemented by 45 CFR 148.120(a)(1). The regulations at 45 CFR 148.120(g)(3) reiterate this position.

III. Conclusion

Unless there is a specific statutory exception (such as the exception to the guaranteed availability requirement set forth in section 2741(e){f}(2)), an issuer that offers a conversion policy is subject to all other individual market requirements under title XXVII of the PHS Act, including the guaranteed renewability requirement of section 2742.

Where to get more information:

The regulations cited in this Bulletin are found in Part 148 of Title 45 of the Code of Federal Regulations (45 CFR 148). Information about the PHS Act is also available on HCFA's website at <http://hipaa.hcfa.gov>.

If you have any questions regarding this Bulletin, call the HIPAA Insurance Reform Help Line at (410) 786-1565.

¹⁰ Section 2741 contains two subsections labeled (e). The first one deals with the application of financial capacity limits. The second subsection deals with market requirements. For purposes of this bulletin, we are relettering the second subsection as (e){f}. Section 2741(e){f}(2) deals with conversion policies.